IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FRANK BETZ ASSOCIATES, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:06-0911
	)	Judge Nixon
SIGNATURE HOMES, INC., BRIAN BURNS,	)	Magistrate Judge Bryant
and SIGNATURE PARTNERSHIP, LLC,	)	
	)	
Defendant.	)	
	)	
SIGNATURE HOMES, INC., BRIAN BURNS,	)	
and SIGNATURE PARTNERSHIP, LLC,	)	
	)	
Third Party Plaintiffs,	)	
	)	
v.	)	
	)	
CHRISTOPHER L. TURNER, TURNER	)	
DESIGNS, and TURNER DESIGNS, INC.,	)	
	)	
Third Party Defendants.	)	

ORDER

Pending before the Court is Defendants Brian Burns, Signature Homes, Inc., and Signature Partnership, LLC's (collectively "Defendants") Motion in Limine I (Doc. No. 145) and Memorandum in Support (Doc. No. 146) ("Defendants' Motion"). Plaintiff Frank Betz Associates, Inc. ("Plaintiff") filed a Memorandum in Opposition. (Doc. No. 157). Defendants seek to exclude any evidence on the issues of: (1) whether houses sold by Defendants more than three years prior to the filing date of this lawsuit infringe on valid copyrights owned by Plaintiff; and (2) the amount of damages Plaintiff may be entitled to recover from the sale of said houses. For the following reasons, Defendants' Motion is **DENIED**.

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Copyright infringement actions must commence within three years after the claim "accrues." 17 U.S.C. § 507(b) (1998); 1-2 <u>Nimmer</u> § 12.05. The Copyright Act does not define "accrues." <u>See</u> 17 U.S.C. § 101. While one Circuit Court follows an "injury rule," determining the statute of limitations period from the moment of the infringing act, (<u>see</u> <u>Auscape Int'l v. Nat'l Geographic Soc'y</u>, 409 F. Supp. 2d 235 (S.D.N.Y. 2002)), most Circuits follow the "discovery rule," allowing copyright holders to file suit within three years of discovering the infringement. <u>See, e.g.,</u> <u>Polar Bear Prod., Inc. v. Timex Corp.</u>, 384 F.3d 700 (9th Cir. 2004). The Sixth Circuit follows the discovery rule. <u>See, e.g.,</u> <u>Roger Miller Music, Inc. v. Sony/ATV Publ'g LLC</u>, 477 F.3d 383, 390 (6th Cir. 2007); <u>Bridgeport Music, Inc. v. Rhyme Syndicate Music</u>, 376 F.3d 615, 621 (6th Cir. 2004).

Betz filed suit in September, 2006, three months after first learning of Signature Defendants' potential infringement from a letter received from one of the Third Party Defendants in this case, Christopher Turner. (Doc. No. 1; Doc. No. 115, Ex. G). Three months falls well within the three year time frame established by the Copyright Act and Sixth Circuit precedent.

In its Motion for Partial Summary Judgment, Plaintiff Betz moved for a ruling as a matter of law on Signature's statute of limitations defense. (Doc. No. 115). This Court granted summary judgment for Plaintiff on this defense. (Doc. No. 176). Signature Defendants seek to re-litigate the issue here. For the foregoing reasons, Signature Defendants' Motion is **DENIED**.

It is so ORDERED.

Entered this _____17_____ day of July, 2009.

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JOHN T. NIXON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

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